

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
CMR & ASSOCIATES, INC. d/b/a PolicySmart,

Plaintiff,

23 -cv-

- against -

TOTAL MANUFACTURING COMPANY,

Defendant.
-----X

COMPLAINT

Plaintiff CMR & ASSOCIATES, INC. d/b/a PolicySmart (“CMR”), by its attorney Harry Weinberg, Law Offices of Harry Weinberg, PLLC, as and for its Complaint against Defendant TOTAL MANUFACTURING COMPANY (“TMC”), alleges as follows:

NATURE OF ACTION

1. This is a breach of contract action seeking compensation for services rendered by CMR to TMC. CMR is in the business of providing consulting services to businesses throughout the United States. Its services are aimed at reducing insurance costs.
2. CMR and TMC entered into a written contract (“the Agreement”) dated November 10, 2022. A copy of the Agreement is annexed hereto as Exhibit A. The Agreement was for a 3-year term – November 10, 2022 to November 9, 2025.
3. CMR’s principal, Christopher M. Roche, is an expert in the field insurance cost reduction.

4. CMR provided services to TMC pursuant to the Agreement in exchange for a fee to be calculated according to the terms of the Agreement as “50% of the savings in your cost of risk and/or administration fees for each of ... [the years] 2022-2023, 2023-2024 and 2024-2025.

5. “Savings” is defined as “the difference between the total annual cost of Group Benefits risk/premiums, fee or expenses currently being paid by TMC and the total cost of Group Benefit risk/premiums, fees or expenses that we will provide you in our plan adjusted for 6% industry trend for Medical for policy years two and three of this engagement.”

5. CMR identified savings of at least \$100,000 per year for the first two years of the contract and at least \$100,000 of savings for years two and three. CMR is entitled to be paid a fee resulting from identified savings whether TMC chooses to adopt CMR’s recommendations or not. CMR builds this protection into its contracts so that clients do not simply utilize its expertise to negotiate with third-parties to achieve the same or substantially similar savings identified by CMR without paying CMR its fee.

6. Although duly demanded, TMC has failed and refused to pay CMR any part of the fees currently owed to CMR.

7. TMC has represented to CMR that, although it has realized the savings identified by CMR for the year 2023-2024, it did not place the coverages identified by CMR nor renegotiate with TMC’s holding broker/insurance carrier because it is alleged that TMC’s private equity partner bundled TMC’s insurance with a number of other companies owned or operated by the private equity partner, achieving the same or substantially similar savings as those identified by CMR.

8. The decision to so bundle TMC's insurance does not relieve TMC of its obligation to pay CMR's fees as required by the Agreement and is in violation of the in-force agreement.

PARTIES

9. CMR is a New York corporation with its principal business address located at 445 Park Avenue, New York, New York.

10. On information and belief, TMC is an Ohio corporation with its principal business address located at 7777 St. Clair Avenue, Mentor, Ohio.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this case pursuant to 28 U.S.C. §1322(a) as there is complete diversity of citizenship of all parties.

12. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as a substantial portion of all work performed that is the subject of this lawsuit was performed within the City, County and State of New York and the Agreement provides that it shall be construed under New York law in the Federal courts within the State of New York.

FACTS

13. On or about November 11, 2022, TMC entered into the Agreement with CMR whereby the parties agreed, in material part, as follows:

3. Your Obligation to Pay Our Fee

a. You are obligated to pay our fee if you use the brokers, administrators, advisors, specialists or providers we recommend and if the brokers, advisors, administrators, specialists or providers we recommend provide you with similar or improved Medical, Dental, Vision, Short-Term Disability, Long-Term Disability, Life & AD&D programs, insurance policies, plan designs, co-pays, deductibles, recordkeeping, pooling levels, servicing wellness programs.

b. CMR and TMC successfully renegotiate lower costs and improved terms with your current providers with the use of CMR's final report ...

4. When Payment of Our Fee is Due

You shall pay our fee in a manner that is mutually agreeable to CMR and TMC but will be due and payable on the first day the insurance policies recommended by us are effective or a successful renegotiation with TMC's holding brokers/carriers/vendors has been concluded. The holding broker(s)/carrier(s)/provider(s) will have 10 business days to respond to CMR's final report ...

6. Change in Ownership

Any change in ownership will not affect the enforceability of this contract.

Agreement, annexed hereto as Exhibit A at pages 1-4.

14. Pursuant to the terms of the Agreement, CMR identified at least \$300,000 in savings to TMC, comprised of at least \$100,000 in savings per each year of the Agreement.

15. Pursuant to the terms of the Agreement, TMC was to pay CMR 50% of estimated savings expected to be realized by TMC during each 12-month period during the effective dates of the Agreement. *Id.* at paragraph 1, pages 2 and 3.

16. TMC has represented to CMR that, rather than realize the savings identified in CMR's Final Report, TMC's equity partner, using, at least in part, CMR's Final Report, independently and without CMR's oversight and counsel, separately negotiated with other entities owned, insured or operated by TMC's equity partner.

17. On information and belief, TMC purchased coverage effective April 1, 2023, based on work performed by CMR.

18. Despite demand that it do so, TMC has failed and refused to pay CMR in whole or in part the sum of \$50,000 currently due for the policy year 2023-2024.

19. TMC has stated it will not pay the amount currently due and will not pay CMR's fee for identified savings to be realized in years 2 and 3 of the Agreement.

FIRST CAUSE OF ACTION

20. CMR hereby incorporates by reference all preceding allegations and makes them part of this Cause of Action as if set forth fully hereat.

21. There existed a valid contract between CMR and TMC.

22. CMR performed all of its obligations pursuant to the Agreement and has performed all of the terms and conditions of the Agreement to be performed by it.

23. TMC has breached and anticipatorily breached its obligations under the Agreement and is liable to CMR for damages incurred by CMR as a result thereof, in a sum believed to be not less than \$150,000.

24. TMC has not performed under the Agreement on its part by, *inter alia*, allowing costs in the spend categories for which CMR was engaged to be improved by its equity partner without appropriate notice to CMR and failing to pay CMR amounts due and owing as a result of CMR's performance.

25. As a result of TMC's repudiation and breach of its obligations under the Agreement and is entitled to contractual money damages from TMC.

WHEREFORE, CMR respectfully requests that the Court enter a judgment in favor of CMR and against TMC for breach of contract in the amount due under the Agreement, the exact amount to be proven at or before trial but believed to be not less than \$150,000, plus its attorney's fees, costs, and interest, together with such other and further relief as to the Court shall be deemed just and proper.

SECOND CAUSE OF ACTION

26. CMR hereby incorporates by reference all preceding allegations and makes them part of this Cause of Action as if set forth fully hereat.

27. TMC received and benefited from valuable services rendered to it by CMR for which it has yet to compensate CMR.

28. CMR is entitled to recover in *quantum meruit* an amount equal to the value of the benefit to TMC resulting from their services to TMC.

WHEREFORE, CMR respectfully requests that the Court enter a judgment in favor of CMR and against TMC for *quantum meruit* damages, the exact amount to be proven at or before trial but believed to be not less than \$150,000, plus its attorney's fees, costs, and interest, together with such other and further relief as to the Court shall be deemed just and proper.

Dated: New York, New York
April 7, 2023

Yours, etc.,

/s/ Harry Weinberg

Harry Weinberg, Esq.
Law Offices of Harry Weinberg, PLLC
Attorney for Plaintiff
One Penn Plaza – Suite 2110
New York, N.Y. 10119
(212) 889-4100
harryesq@aol.com

EXHIBIT A

November 7, 2022

Mr. John Giancola
Controller
Total Manufacturing Company
7777 St. Clair Avenue
Mentor, OH 44060

Re: ***Letter of Agreement - Group Benefit Consulting Engagement***

Dear John:

CMR & Associates (dba PolicySmart) ("We," "Us," "Our") agrees to provide Total Manufacturing Company (hereinafter "TMC," "You," "Your," "Yours",) with a plan to reduce your overall cost of Group Benefit risk/insurance*, to include: broker, vendor and administration fees associated with your Group Benefit expenses (Medical, Dental, Vision, Short-Term Disability, Long-Term Disability, Life & AD&D plans). We will present a fully funded, self-funded or Captive option(s) over a three-year period and offer new alternatives for your plans. As part of our services, we will provide you with insurance brokers, advisors, recordkeepers, administrators or specialists accessed from *The CMR Database*®, who have agreed to obtain insurance or specialized services for you at the rates and fees that will be presented to you in our final report.

1. Services Provided

CMR will assist TMC in the following areas regarding your Group Benefit programs specific to Medical, Dental, Vision, Short-Term Disability, Long-Term Disability, Life & AD&D plans.

- Lower premiums, fees and expenses for Medical, Dental, Vision, Short-Term Disability, Long-Term Disability, Life & AD&D plans over a three-year period, 2022-2023, 2023-2024 and 2024-2025
- Replicate or improve TMC's current Medical, Dental, Vision, Short Term Disability, Long Term Disability, Life & AD&D plan designs, review and make recommendations as to your existing Group Benefit offerings;
- Provide TMC with access to brokers, advisors, administrators or specialists from *The*

CMR Database® in the areas of Medical, Dental, Vision, Short-Term Disability, Long-Term Disability, Life & AD&D plans;

- Review and audit TMC's existing Medical, Dental, Vision, Short-Term Disability, Long-Term Disability, Life & AD&D program offerings and provide a summary, observations and suggestions to management which will be used as a basis for soliciting competitive proposals for participating brokers and providers;
- Send TMC's Medical, Dental, Vision, Short-Term Disability, Long-Term Disability, Life & AD&D plan information to selected administrators, brokers/providers who will be appropriately matched candidates for TMC's requirements in such areas as; industry specialty, contract understanding, peer group expertise, servicing capabilities, recordkeeping, employee group size, plan administration etc.;
- If of interest to TMC, CMR will assist with the selection, oversight and transition to any new broker, insurance carrier, retirement provider, administrator and/or insurance provider specialist(s) as to effectuate and deliver quantitative and/or qualitative improvement(s) related to TMC's Medical, Dental, Vision, Short-Term Disability, Long-Term Disability, Life & AD&D, programs for 2022-2023, 2023-2024 and 2024-2025 and act in an oversight capacity offering ongoing stewardship.
- If of interest to TMC, CMR will renegotiate with TMC's holding broker/providers, carriers, vendors with the use of CMR's Final Report to effectuate quantitative and/or qualitative improvement(s) for TMC's Medical, Dental, Vision, Short-Term Disability, Long-Term Disability, Life & AD&D plans for the years 2022-2023, 2023-2024 and 2024-2025.

1. **Our Fee**

You agree to compensate us for our services as provided below:

You will pay us our fee of 50% of the savings in your cost of risk and/or administration fees for each of the next two-years: 2022-2023, 2023-2024 and 2024-2025. Savings means the difference between the total annual cost of Group Benefit risk/premiums, fees or expenses currently being paid by TMC and the total annual cost of Group Benefit risk/premiums, fees or expenses that we will provide to you in our plan adjusted for 6% industry trend for Medical for policy years-two and three of this engagement. Cost of risk means insurance premiums, advisory fees, fixed costs, claim and claim liability, broker, third-party administration fees, and/or vendor fees, if applicable. The baseline benchmark utilized to determine savings for the second and third year of this contract will be the original cost of risk established for the initial year of the contract (as outlined in the attached) adjusted for industry trend (6%) for Group Benefit premiums only (e.g., Mercer independent annual survey).

3. Your Obligation to Pay Our Fee

- a. You are obligated to pay us our fee if you use the brokers, administrators, advisors, specialists or providers we recommend and if the brokers, advisors, administrators, specialists or providers we recommend provide you with similar or improved Medical, Dental, Vision, Short-Term Disability, Long-Term Disability, Life & AD&D programs, insurance policies, plan designs, co-pays, deductibles, recordkeeping, pooling levels, servicing wellness programs.
- b. CMR and TMC successfully renegotiate lower costs and improved terms with your current providers with the use of CMR's final report; or

Should the number of participating employees in your Medical, Dental, Vision, Short-Term Disability, Long-Term Disability, Life & AD&D plans increase or decrease during the term of this agreement, the savings sharing arrangement will adjust proportionately. All insurance carriers recommended will have a minimum financial rating of "A-" from A.M. Best & Co. During CMR's engagement, any new brokerage, advisor(s) and provider activities/discussions specific to Medical, Dental, Vision, Short-Term Disability, Long-Term Disability, Life & AD&D will be directed to CMR.

4. When Payment of Our Fee is Due

You shall pay our fee in a manner that is mutually agreeable to CMR and TMC but will be due and payable on the first day the insurance policies recommended by us are effective or a successful renegotiation with TMC's holding brokers/carriers/vendors has been concluded. The holding broker(s)/carrier(s)/provider(s) will have 10 business days to respond to CMR's Final Report.

5. Governing Law

We agree with each other that this agreement shall be construed under New York law in the Federal courts of the State of New York, which shall have jurisdiction over the parties to this agreement.

6. Change in Ownership

Any change in ownership will not affect the enforceability of this contract.

7. **Retainer**

To secure our services and to provide you with a detailed plan to reduce your Medical, Dental, Vision, Short-Term Disability, Long-Term Disability, Life & AD&D premiums, fees and costs, you agree to pay us a retainer of \$1,000 within 10 business days of executing this agreement. If CMR fails to meet its obligations under this agreement, CMR will, upon request, return said retainer. It is also agreed that the \$1,000 will be deducted from the savings sharing formula.

Total Manufacturing Company

CMR & Associates, Inc. (dba PolicySmart)

Accepted By: John Giancola

Accepted By: Christopher Roche

Signature John Giancola

Signature: Christopher Roche

Title: Controller

Title: President / CEO

Date: 2022-11-10

Date: 2022-11-10

*As outlined in the schedules attached. _____

Signature Certificate

Reference number: SOABX-QPZUQ-NCM42-VV3IG

Signer

Timestamp

Signature

John Giancola

Email: jgiancola@totalmfg.com

Shared via link

Sent:

10 Nov 2022 16:00:37 UTC

Viewed:

10 Nov 2022 17:17:50 UTC

Signed:

10 Nov 2022 19:47:43 UTC



IP address: 104.231.93.198

Location: Mentor, United States

Christopher Roche

Email: croche@cmr-associates.com

Shared via link

Sent:

10 Nov 2022 16:00:37 UTC

Viewed:

10 Nov 2022 20:10:05 UTC

Signed:

10 Nov 2022 20:10:54 UTC



IP address: 107.77.224.37

Location: New York, United States

Document completed by all parties on:

10 Nov 2022 20:10:54 UTC

Page 1 of 1



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